

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KNOWLINGTON O. BURBAGE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-133-SLR
)	
CITY OF WILMINGTON, MAYOR)	
JAMES BAKER, POLICE DEPARTMENT)	
OF WILMINGTON, DELAWARE,)	
CHIEF MICHAEL SZCZERBA,)	
UNKNOWN SERGEANT,)	
OFFICER LEARY, OFFICER MYERS,)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR DISCOVERY AND
PRODUCTION OF TAPES AND ANY AND ALL EVIDENCE**

Defendants, by and through their undersigned counsel, respond as follows to Plaintiffs'

Request for Discovery and Production of Tapes and any and all Evidence:

1. Plaintiff respectfully request that the Court Order the Custodian of evidence, being State, City, County of Delaware and the States Attorneys Office, to make available and send to plaintiff by way of via 1st class mail Certified-Return Receipt any and all taped recordings, police reports, affidavits, and documents of all officers that was part of and envolved with the plaintiff on the day of arrest and assault. That is in the possession of the State, and/or States Attorneys Office, and Custodian of Evidence regarding this case.

RESPONSE: Please see attached police report. Affidavits of the named Defendants and witnesses will be attached to Defendants' Motion for Summary Judgment which will be filed on or before April 15, 2005. At this time, no affidavits have been written.

/s/ Rosamaria Tassone, (I.D. #3546)
City of Wilmington Law Department
Louis L. Redding City/County Building
800 French Street, 9th Floor
Wilmington, Delaware 19801
(302) 576-2175
Attorney for Defendants City of Wilmington,
Mayor James Baker, Police Department of
Wilmington, Chief Michael Szczerba and
Officer Joseph Leary

DATED: March 16, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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Plaintiff,)	
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v.)	C.A. No. 04-133-SLR
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CITY OF WILMINGTON, MAYOR)	
JAMES BAKER, POLICE DEPARTMENT)	
OF WILMINGTON, DELAWARE,)	
CHIEF MICHAEL SZCZERBA,)	
UNKNOWN SERGEANT,)	
OFFICER LEARY, OFFICER MYERS,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I, Rosamaria Tassone, Esq., hereby certify that on this 16th day of March, 2005 I electronically filed the Defendants' Response to Plaintiffs' Request for Discovery and Production of Tapes and any and all Evidence with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the individual(s) noted below. These documents are available for viewing and downloading from CM/ECF. I mailed a hard copy by United States Postal Service to the following:

Knowlington O. Burbage
Reg. #21524-051
F.C.I. Elkton
P.O. Box 10
Lisbon, OH 44415

/s/ Rosamaria Tassone, (I.D. #3546)
Assistant City Solicitor
City of Wilmington Law Department
Louis L. Redding City/County Building
800 French Street, 9th Floor
Wilmington, Delaware 19801

Page: 1	Date: 06/21/2002	Wilmington PD	30-02-061859
Reported Date and Time FRI 06/21/2002 1107		Initial Crime Report	
Location: 3505 MILLER RD Wilmington, DE 19802 CUMBERLAND FARMS PARKING LOT			
M.O. and Incident Overview: The listed defendant was known to have crack-cocaine on his possession from information from a C.I., D-1 was stopped and had on his possession crack-cocaine.			
Grid 222-222	Sector	County New Castle	Domestic Related <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4-F-14 Sent? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Gen Broadcast Sent? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Victim Information

Victim Number 001	Name		
Type Society/Public	Sex	Race	Ethnic Origin
Age	D.O.B.		
Address		Resident Status	Home Telephone
		Employer/School	Work Telephone
Reporting Person? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Victim Injured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Victim Deceased? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Officer Comments
Injuries		Description of Injuries	

Suspect/Defendant Information

Sequence 001	Type Defendant	SBI Number	Name BURBAGE, KNOWLINGTON		Nick Name
Sex Male	Race Black	Ethnic Origin Non-Hispanic	Age 39	D.O.B. 01/07/1963	Height 5' 04"
Weight 150	Skin Tone Light Brown	Eye Color Brown			
Hair Color Black	Hair Length	Hair Style	Facial Hair	Voice Speech	Teeth
Build Average	Glasses				
Disguise	Disguise Color(s)	Resident Status Full Time	Unusual Characteristics	Armed With Unarmed	
Address 1121 REED ST Wilmington, DE 19805		Home Telephone (302) 575-0405	Employer/School	Work Telephone	
Arrest Number 02002376	Arrest Type On View	Suspect's Clothing Description			

Crimes and Associated Information

Victim Number 001	Crime Seq 001	Statute DE:16:4753:AA2A:F:B	Crime Description Trafficking in Cocaine 5 Grams to 50 Grams		
Location Type Parking Lot/Garage		Status Adult Arrest 06/21/2002	Involvement <input type="checkbox"/> Alcohol <input checked="" type="checkbox"/> Drugs <input type="checkbox"/> Computer	General Offense	
Suspected Hate/Bias <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - N/A		Crime Code 3553 - Cocaine/Trafficking			
Burglary Force Involved <input type="checkbox"/> Yes <input type="checkbox"/> No		Criminal Activity Possessing/Concealing			
Drugs	Property Category Drugs/Narcotics	Quantity 15.9	Drug Measure Gram	Drug Type Crack Cocaine	Date Seized
Extended Description ONE CLEAR SANDWICH BAG CONTAINING TWO CLEAR KNOTTED PLASTIC BAGS CONTAINING AN OFF WHITE CHUNKY SUBSTANCE.					

Victim Number 001	Crime Seq 002	Statute DE:16:4751:000A:F:C	Crime Description Possession With Intent to Deliver a Narcotic Schedule II Controlled Substance		
Location Type Parking Lot/Garage		Status Adult Arrest 06/21/2002	Involvement <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computer	General Offense	
Suspected Hate/Bias <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - N/A		Crime Code 3556 - Cocaine/Possession with Intent to Deliver			
Burglary Force Involved <input type="checkbox"/> Yes <input type="checkbox"/> No		Criminal Activity Possessing/Concealing			
Drugs	Property Category Drugs/Narcotics	Quantity 15.9	Drug Measure Gram	Drug Type Crack Cocaine	Date Seized

Victim Number 001	Crime Seq 003	Statute DE:16:4755:00A5:F:F	Crime Description Maintaining a Vehicle for Keeping Controlled Substances-		
Location Type Parking Lot/Garage		Status Adult Arrest 06/21/2002	Involvement <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computer	General Offense	
Suspected Hate/Bias <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - N/A		Crime Code 3553 - Cocaine/Trafficking			
Burglary Force Involved <input type="checkbox"/> Yes <input type="checkbox"/> No		Criminal Activity Possessing/Concealing			
Drugs	Property Category Drugs/Narcotics	Quantity 15.9	Drug Measure Gram	Drug Type Crack Cocaine	Date Seized

Reporting Officer
PTLM MYERS - 7243 2

Supervisor Approval
THOMAS MONAHAN OJWITHM Date 06/22/2002 0901

Victim - Suspect/Defendant Relationships

Victim - 001 Society/Public	Suspect/Defendant - 001 BURBAGE, KNOWLINGTON	Victim Offender Relationship Victimless Crime
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Investigative Narrative

On the above date and time 13a (Myers/Leary) received information from a pass proven reliable confidential informant that a drug transaction was going to take place at the Cumberland Farms parking lot between 1030 hours and 1130 hours this date. These officers were given the information that the suspect was going to be a black male driving a red Plymouth Voyager bearing Delaware registration PC47820, and is to be delivering a quarter ounce of crack-cocaine to another unknown black male in the parking lot of Cumberland Farms.

At 1030 hours this date these officers were parked across the street from the Cumberland Farms parking lot, awaiting a call from the confidential informant to advise these officers that the suspect was present. At this time 17a (Chorlton/Curry) were also present, at which point Ptlm.Chorlton was conducting surveillance on the parking lot, awaiting the described suspects vehicle. At 1107 hours this date, the C.I. informed these officers that the suspects vehicle was at the location, at which point Ptlm.Chorlton also confirmed same. At this time these officers entered the Cumberland Farms parking lot in a marked patrol unit, and observed a black male exiting the described red Plymouth Voyager. At this time the suspect (Burbage, Knowlington D.O.B 01-07-63) was approached by these officers and taken into custody and pat searched for officer safety by Ptlm.Myers. At this time Ptlm.Myers recovered a clear sandwich bag containing two clear knottedbags containing an off white chunky substance from the suspects groin area of his pants and \$421.00 U.S.C from his front left pocket. D-1 was then advised that he was under arrest. When D-1 was asked what was in the bag, he stated a lot of crack. At this time D-1 and his vehicle was transported to Central without incident.

At Central the substance found on D-1 tested positive for crack-cocaine and had a preliminary weight of 15.9 grams, same was tagged and turned over to records division. The money on D-1 (\$421.00 U.S.C) was seized and also turned over to records division. D-1 was then read his Miranda warnings and asked if he had any statements. At this time D-1 stated that he found the crack-cocaine, and stated that he knew he could sell it to somebody and that he was going to meet the person at the Cumberland Farms. D-1 had no further statements. At this time D-1 was booked on the above listed charges and turned over to the turn-key. D-1's motor vehicle was towed by Tow Zone at Central, impound number 32980.

It should be noted that this incident occurred in the State Of Delaware, County Of New Castle. These officers are sworn members of the Wilmington Department of Police. These officers were acting in said capacity during this incident.

Reporting Officer PTLM MYERS - 7243 2		Supervisor Approval THOMAS MONAHAN OJWITHM Date 06/22/2002 0901	
Detective Notified		Referred To	
Solvability Factors	<input type="checkbox"/> Witness <input type="checkbox"/> Suspect Located	<input type="checkbox"/> M. O. <input type="checkbox"/> Suspect Described	<input type="checkbox"/> Trace Stolen Property <input type="checkbox"/> Suspect Identified
		<input type="checkbox"/> Suspect Named <input type="checkbox"/> Suspect Vehicle Identified	Status Has Follow Up

Discovery Documents1:04-cv-00133-SLR Burbage v. City of Wilmington, et al**U.S. District Court****District of Delaware**

Notice of Electronic Filing

The following transaction was received from Tassone, Rosamaria entered on 3/16/2005 at 2:44 PM EST and filed on 3/16/2005

Case Name: Burbage v. City of Wilmington, et al**Case Number:** 1:04-cv-133**Filer:** City of Wilmington
Police Department of Delaware
James Baker
Micheal Szczerba
Leary**Document Number:** 34**Docket Text:**

RESPONSE to Discovery Request by City of Wilmington, James Baker, Police Department of Delaware, Micheal Szczerba, Leary. (Attachments: # (1))(Tassone, Rosamaria)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1079733196 [Date=3/16/2005] [FileNumber=12184-0]
[1a0acc0e93b10e4dc19df224bd45d55f1bf2eac69985014bb70f6529b5e1bfb6718f4
e78b9320d2c69c2ad6133b9b28717f9e7eb2289b5300fbf95785b3610e4]]

Document description:**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1079733196 [Date=3/16/2005] [FileNumber=12184-1]
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9eccc8ef90f30980724dc7097b69577fc57f63ab188140f2a03d767e154]]

1:04-cv-133 Notice will be electronically mailed to:

Rosamaria Tassone rtassone@ci.wilmington.de.us, dkellam@ci.wilmington.de.us

1:04-cv-133 Notice will be delivered by other means to:

Knowlinton O. Burbage
#21524-051
FCI Elkton

P.O. Box 10
Lisbon, OH 44432